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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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23338	7590	06/19/2006	EXAMINER	
DENNISON, SCHULTZ, DOUGHERTY & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314			WONG, BLANCHE	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,399

Applicant(s)

MESH ET AL.

Examiner

Blanche Wong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8-12,14-25,27,29-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.
2. Examiner notes that claim 32 is identical to claim 2.

Drawings

3. The drawings are objected to because Fig. 1 does not have descriptive legend nor label.

Claim Objections

4. Claim 24 is objected to because of the following informalities: "separation" in line 3 should be replaced with – separating --.
5. Claim 25 is objected to because of the following informalities: "an optical transceiver of one said at least one service collection unit" in lines 3-4 should be replaced with – the optical transceiver of one said at lest one service collection unit – as recited in claim 1, lines 6-7.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 1-3,14,30-32** are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tienan et al. (U.S. Pat No. 6,172,988).

With regard to claim 1, Tienan discloses (**in Fig. 1**)

collecting (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**), *in at least one service collection unit (encoder 12, col. 5, line 58)*, services data in their original protocols from a plurality of different types of services data (**elementary streams 24, col. 5, line 62; video, audio or other coded bitstream as an "elementary stream, col. 1, line 35-36)** to be transmitted, each said at least one service collection unit including an optical transceiver;

processing (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) the services data in their original protocols into packets;

converting (**MUX 16, col. 6, line 1**) the packets into optical signals on an optical fiber (**fiber optic link, col. 5, line 61**) for transmission into a metro network; and

sorting (**DE/MUX 20, col. 6, line 6**) the service data from a plurality of said converted packets *in at least one aggregator module (decoder 18, col. 5, line 59)*, said at least one aggregator module having an aggregator optical transceiver, coupled (**path 28 between encoder and decoder, col. 5, line 64**) for optical communication to the at least one service collection unit.

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With regard to claim 2, Tienan further discloses

receiving said aggregated services data (**output stream 34, col. 5, line 63-64**),
from at least one network, *in one said at least one aggregator module (decoder 18, col. 5, line 59)*;

sorting or de-multiplexing (**DE/MUX 20, col. 6, line 6**) said aggregated services data according to end destination;

processing the sorted or de-multiplexed (**DE/MUX 20, col. 6, line 6**) services data into packets according to end destination;

loading (**MUX 16, col. 6, line 1**) the packets onto an optical fiber (**fiber optic link, col. 5, line 61**) for transmission to a more local network;

unloading (**DE/MUX 20, col. 6, line 6**) the packets from the optical fiber (**fiber optic link, col. 5, line 61**) *in one said at least one service collection unit*;

switching (**MUX 16, col. 6, line 1**) the packets to local service ports in said one said at least one service collection unit;

de-packing (**DE/MUX 20, col. 6, line 6**) the packets to different services data;
and

sending (**PES De-Packetizer 22, col. 6, line 10**) data of each service to an appropriate media.

With regard to claim 3, Tienan further discloses

inserting (**MUX 16, col. 6, line 1**) the processed packets into transmission frames, before said step of loading; and wherein said step of loading includes: loading the transmission frames onto an optical fiber for transmission.

With regard to claim 14, Tienan further discloses the step of sorting includes: switching (**MUX 16, col. 6, line 1**) services data of a single type of service to an aggregation sub-module (**DE/MUX 20, col. 6, line 6**) for said single type of service.

With regard to claim 30, Tienan further discloses the step of sorting includes sorting (**DE/MUX 20, col. 6, line 6**) the services data according to service type, and

aggregating (**PES De-Packetizer 22, col. 6, line 8**) the sorted services data from each different service from transmission over a compatible transport network.

With regard to claim 31, Tienan further discloses the step of sorting includes sorting (**DE/MUX 20, col. 6, line 6**) the services data from a plurality of packets according to end destination, and

aggregating (**PES De-Packetizer 22, col. 6, line 8**) said sorted data according to end destination for transmission over a compatible transport network.

With regard to claim 32, see analysis for claim 2.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 21,23,24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan as applied to claim 1 above, and further in view of Jasen et al. (Pub. No. US2002/0019879 A1).

With regard to claim 21, Tienan further discloses

receiving (**DE/MUX 20, col. 6, line 6**) aggregated services data from at least two networks in an aggregator (**decoder 18, col. 5, line 59**), each service data in its own protocol and at its own bit rate;

sorting (**DE/MUX 20, col. 6, line 6**) the received service data, according to network destination;

processing (**DE/MUX 20, col. 6, line 6**) the services data in their original protocols into packets;

switching (**MUX 16, col. 6, line 1**) each packet to an appropriate trunk optical fiber (**fiber optic link, col. 5, line 61**) for transmission to said at least one service collection unit (**encoder 12, col. 5, line 58**).

However, Tienan fails to explicitly show adding a connection identification tag to each packet.

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In an analogous art, Jasen discloses adding a connection identification tag to each packet (... **tagging network traffic messages or packets ... , para. 0029**).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include adding a connection identification tag to each packet in Tienan's system. The suggestion/motivation for doing so would have been to provide for QoS. Jasen, para. [0029]. Therefore, it would have been obvious to combine Jasen with Tienan for the benefit of adding a connection identification tag to each packet in order to provide for QoS, to obtain the invention as specified in claim 21.

With regard to claim 23, Tienan further discloses the step of sorting the received services data includes

sorting by de-multiplexing (**DE/MUX 20, col. 6, line 6**).

With regard to claim 24, Tienan further discloses the step of sorting the received services data includes

separating (**DE/MUX 20, col. 6, line 6**) of aggregated services data.

10. **Claims 22,25,27,29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan and Jasen as applied to claim 21 above, and further in view of Ku et al. (Pub No. US2002/0085565).

With regard to claim 22, the combination of Tienan and Jasen discloses the method according to claim 21. However, the combination fails to explicitly show encapsulating tagged packets into PoS transmission frame before a step of switching.

In an analogous art, Ku discloses encapsulating tagged packets into PoS transmission frame before a step of switching (**... label switching (e.g. MPLS protocol) may be used in conjunction with a link protocol (e.g. PPP over SONET ... , para. [0060])**).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include encapsulating tagged packets into PoS transmission frame before a step of switching in Tienan and Jasen's system. The suggestion/motivation for doing so would have been to allow disparate network equipment the ability to communicate via a shared network resource. Ku, para. [0060]. Therefore, it would have been obvious to combine Ku with Tienan and Jasen for the benefit of encapsulating tagged packets into PoS transmission frame before a step of switching in order to allow disparate network equipment the ability to communicate via a shared network resource, to obtain the invention as specified in claim 22.

With regard to claim 25, the combination of Tienan, Jasen, and Ho discloses the method according to claim 22. Tienan further discloses

receiving (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) incoming packets from a plurality of trunk ports in the optical transceiver of one said at least one service collection unit (**encoder 12, col. 5, line 58**).

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reassembling (**PES De-Packetizer 22, col. 6, line 8**) all segments of each service to their original bit stream (**ES 32, col. 5, line 66**); and

transmitting (**PES De-Packetizer 22, col. 6, line 8**) each service to a final destination over a local network appropriate for that service.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include decapsulating each encapsulated PoS packet; switching each packet to a local network according to said tag on the packet; and stripping off said tag in Tienan's system. The suggestion/motivation for doing so would have been to reverse the tagging and encapsulating steps of claim 25 to reach the data packet. Therefore, it would have been obvious to combine Ho with Tienan and Jasen for the benefit of decapsulating each encapsulated PoS packet; switching each packet to a local network according to said tag on the packet; and stripping off said tag in order to reverse the tagging and encapsulating steps of claim 25 to reach the data packet, to obtain the invention as specified in claim 25.

With regard to claim 27, Tienan further discloses the step of receiving includes:

receiving (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) transmission frames from said plurality of trunk ports in said one said at least one service collection unit (**encoder 12, col. 5, line 58**);

switching (**MUX 16, col. 6, line 1**) said transmission frames from said optical transceiver of said at least one service collection unit to at least one transmission framer (**PES De-Packetizer 22, col. 6, line 8**); and

de-packing (**DE/MUX 20, col. 6, line 6**) said transmission frames.

With regard to claim 29, Tienan further discloses the step of transmitting includes:

passing (**encoder 12, col. 5, line 58**) said services data to a service interface in a service card; and

sending (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) said services data through a selected destination service port in said one said at least one service collection unit (**encoder 12, col. 5, line 58**), from transmittal to a final destination.

11. **Claims 5,8,12,15-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan in view of Ku.

With regard to claim 5, Tienan discloses

collecting (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**), *in at least one service collection unit* (**encoder 12, col. 5, line 58**), services data in their original protocols from a plurality of different types of services data (**elementary streams 24, col. 5, line 62; video, audio or other coded bitstream as an “elementary stream, col. 1, line 35-36**) to be transmitted, each said at least one service collection unit including an optical transceiver;

processing (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) the services data in their original protocols into packets;

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converting (**MUX 16, col. 6, line 1**) the packets into optical signals on an optical fiber (**fiber optic link, col. 5, line 61**) for transmission into a metro network; and sorting (**DE/MUX 20, col. 6, line 6**) the service data from a plurality of said converted packets *in at least one aggregator module* (**decoder 18, col. 5, line 59**), said at least one aggregator module having an aggregator optical transceiver, coupled (**path 28 between encoder and decoder, col. 5, line 64**) for optical communication to the at least one service collection unit.

However, Tienan fails to explicitly show segmenting an incoming bit stream of services data; adding a tag to a header of each segment, each tag including connection identification between a source and a destination end-point of the bit stream; encapsulating said tagged segment into a Packet-over-SONET (PoS) frame; and transmitting said PoS frame over the optical transceiver of one of said at least one service collection unit.

In an analogous art, Ku discloses segmenting (**MPLS, para. [0060]**) an incoming bit stream of services data; adding (**MPLS, para. [0060]**) a tag to a header of each segment, each tag including connection identification between a source and a destination end-point of the bit stream;

encapsulating (... **label switching (e.g. MPLS protocol) may be used in conjunction with a link protocol (e.g. PPP over SONET ..., para. [0060])**) said tagged segment into a Packet-over-SONET (PoS) frame; and

transmitting **(SONET)** said PoS frame over the optical transceiver of one of said at least one service collection unit **(PE and CE in Fig. 1, para. [0042]-[0043])**.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include segmenting an incoming bit stream of services data; adding a tag to a header of each segment, each tag including connection identification between a source and a destination end-point of the bit stream; encapsulating said tagged segment into a Packet-over-SONET (PoS) frame; and transmitting said PoS frame over the optical transceiver of one of said at least one service collection unit in Tienan's method. The suggestion/motivation for doing so would have been to allow disparate network equipment the ability to communicate via a shared network resource. Ku, para. [0060]. Therefore, it would have been obvious to combine Ku with Tienan for the benefit of segmenting an incoming bit stream of services data; adding a tag to a header of each segment, each tag including connection identification between a source and a destination end-point of the bit stream; encapsulating said tagged segment into a Packet-over-SONET (PoS) frame; and transmitting said PoS frame over the optical transceiver of one of said at least one service collection unit in order to allow disparate network equipment the ability to communicate via a shared network resource, to obtain the invention as specified in claim 5.

With regard to claim 8, the combination of Tienan and Ku discloses the method according to claim 5.

Ku further discloses a stream switch (**network switches, para. [0044]**).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include a stream switch in the combination of Tienan and Ku's method. The suggestion/motivation for doing so would have been to relay and route data traffic among edge equipment and other switches. Ku, para. [0044]. Therefore, it would have been obvious to combine Ku with Tienan for the benefit of a stream switch in order to relay and route data traffic among edge equipment and other switches, to obtain the invention as specified in claim 8.

With regard to claim 12, the combination of Tienan and Ku discloses the method according to claim 5.

Ku further discloses a step of switching the tagged segment to an appropriate Trunk by a packet switch before a step of encapsulating (... **label switching (e.g. MPLS protocol) may be used in conjunction with a link protocol (e.g. PPP over SONET ..., para. [0060]**).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include a step of switching before a step of encapsulating in the combination of Tienan and Ku's method. The suggestion/motivation for doing so would have been to allow disparate network equipment the ability to communicate via a shared network resource. Ku, para. [0060]. Therefore, it would have been obvious to combine Ku with Tienan for the benefit of a step of switching the tagged segment to an appropriate Trunk by a packet switch before said step of encapsulating in order to allow

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disparate network equipment the ability to communicate via a shared network resource, to obtain the invention as specified in claim 12.

With regard to claim 15, the combination of Tienan and Ku discloses the method according to claim 5. Tienan further discloses a step of sorting includes: receiving incoming optical signals from said at least one service collection unit (**encoder 12, col. 5, line 58**) in an optical transceiver of one of said at least one aggregator module (**decoder 18, col. 5, line 59**); and Ku further discloses a stream switch (**network switches, para. [0044]**).

With regard to claim 16, the combination of Tienan and Ku discloses the method according to claim 15.

Ku further discloses a step of sorting that further includes: reading tags (**MPLS, para. [0060]**) on said decapsulated tagged segments to one of said at least one aggregator module, according to said segment's tag.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include a step of sorting that further includes: reading tags on said decapsulated tagged segments in the combination of Tienan and Ku's method. The suggestion/motivation for doing so would have been to enable MPLS. Ku, para. [0060]. Therefore, it would have been obvious to combine Ku with Tienan for the benefit of a step of sorting that further includes: reading tags on said decapsulated tagged segments in order to enable MPLS, to obtain the invention as specified in claim 16.

With regard to claim 17, the combination of Tienan and Ku discloses the method according to claim 16. Tienan further discloses

reassembling (**DE/MUX 20, col. 6, line 6**) data of each type to its original bit stream; and

aggregating (**PES Packetizer 14, col. 5, line 67-col. 6, line 1**) data of each said different services together for transmission over an appropriate network.

Ku further discloses removing (**MPLS, para. [0060]**) the tag from each segment.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include removing the tag from each segment in the combination of Tienan and Ku's method. The suggestion/motivation for doing so would have been to enable MPLS. Ku, para. [0060]. Therefore, it would have been obvious to combine Ku with Tienan for the benefit of removing the tag from each segment in order to enable MPLS, to obtain the invention as specified in claim 17.

With regard to claim 18, the combination of Tienan and Ku discloses the method according to claim 17. Tienan further discloses a step of aggregating that includes multiplexing (**MUX 16, col. 6, line 1**) data from a plurality of different services onto a single fiber over different wavelengths.

With regard to claim 19, the combination of Tienan and Ku discloses the method according to claim 17. Tienan further discloses a step of aggregating (**MUX 16, col. 6,**

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line 1) that includes aggregating services data of a single service type directly onto an optical fiber (**fiber optic link, col. 5, line 61**) in an appropriate network.

12. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan and Ku as applied to claim 5 above, and further in view of Martin (U.S. Pat No. 6,952,480).

With regard to claim 9, the combination of Tienan and Ku discloses the method according to claim 5. However, the combination fails to explicitly show the encapsulated segment is scrambled.

In an analogous art, Martin discloses scrambling before the SONET frame generator (**col. 1, lines 57-59**).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include scrambling before the SONET frame generator in Tienan and Ku's method. The suggestion/motivation for doing so would have been to provide protection. Martin, col. 1, line 60. Therefore, it would have been obvious to combine Martin with Tienan and Ku for the benefit of scrambling before the SONET frame generator in order to provide protection, to obtain the invention as specified in claim 9.

13. **Claims 10 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan and Ku as applied to claim 5 above, and further in view of Farhan (U.S. Pat No. 6,356,369).

With regard to claim 10, the combination of Tienan and Ku discloses the method according to claim 5. However, the combination fails to explicitly show a step of transmitting includes WDM multiplexing of optical signals from optical transceivers of more than one said at least one service collection unit with different specific wavelengths to be transmitted.

In an analogous art, Farhan discloses WDM multiplexing **(multiplexer/demultiplexer 325, col. 5, line 6)** of optical signals from optical transceivers **(digital optical transmitter 305 in Fig. 3, col. 4, line 30)** with different specific wavelengths to be transmitted **(it is Examiner's position that a laser diode, col. 4, line 67-col. 5, line 1, generates different specific wavelengths; see also Fig. 3).**

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include WDM multiplexing of optical signals from optical transceivers with different specific wavelengths to be transmitted in Tienan and Ku's system. The suggestion/motivation for doing so would have been to enable fiber optic communication. Farhan, col. 5, line 8. Therefore, it would have been obvious to combine Farhan with Tienan and Ku for the benefit of WDM multiplexing of optical signals from optical transceivers with different specific wavelengths to be transmitted in order to enable fiber optic communication, to obtain the invention as specified in claim 10.

With regard to claim 20, the combination of Tienan, Ku and Farhan discloses the method according to claim 10. Tienan further discloses

de-multiplexing (**DE/MUX 20, col. 6, line 6**) incoming optical signals; and

sending (**PES De-Packetizer 22, col. 6, line 8**) said de-multiplexed signals to the optical transceiver of one said at least one aggregator module (**decoder 18, col. 5, line 59**).

14. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tienan and Ku as applied to claim 5 above, and further in view of Chesler et al. (**U.S. Pat No. 5,042,906**).

With regard to claim 11, the combination of Tienan and Ku discloses the method according to claim 5. However, the combination fails to explicitly show a step of segmenting includes segmenting said incoming bit stream into variable-length segments.

In an analogous art, Chesler discloses variable-length segments (**L1 and L2, col. 2, line 33**) in optical communication.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include variable-length segments in Tienan and Ku's method. The suggestion/motivation for doing so would have been to provide for multiple optical fiber and substantially zero dispersion. Chesler, col. 2, line 28-35. Therefore, it would have been obvious to combine Chesler with Tienan and Ku for the benefit of variable-length

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segments in order to provide for multiple optical fiber and substantially zero dispersion, to obtain the invention as specified in claim 11.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claim 1 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/753399. Although the conflicting claims are not identical, they are not patentably distinct from each other.

09/753399 discloses a method for data transmission over an optical network that performs the functions of a service collection unit and an aggregator, namely "collecting, in at least one service collection unit, ... processing ... into packets, converting packets into optical signals ... sorting ... in at least one aggregator module, ...".

The current application shows similarly.

09/753513 discloses a system for data transmission over an optical network with “at least one service collection unit including a collection module for collecting ... a processing module for processing ... into packets; and a packet transmission module for converting the packets into optical signals ...; and an aggregator ... including: a sorting module for sorting ...”.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to observe the similarities between 09/753399 and 09/753513. The suggestion/motivation for doing so would have been to provide for implementation of a method. Therefore, it would have been obvious to have a system claim for the benefit of implementation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RW

BW
May 31, 2006


HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600